

W. H. HUNT

IBLA 80-946

Decided May 26, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, terminating geothermal resource leases U-38459 and U-39753 for nonpayment of annual rental.

Affirmed.

1. Geothermal Leases: Rentals -- Geothermal Leases: Termination

Where the holder of geothermal resource leases mistakenly pays only half the amount of the full annual rental due by the anniversary date of the lease, the leases automatically terminate by operation of law and the cases are properly closed on the BLM records.

APPEARANCES: W. H. Hunt, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

W. H. Hunt has appealed from a notice of return of remittance by the Utah State Office, Bureau of Land Management (BLM), dated June 6, 1980, which declared that geothermal leases U-38459 and U-39753 had terminated effective June 1, 1979, for nonpayment of rental. Appellant's rental checks for the leases for the period June 1, 1980, to June 1, 1981, were returned with the notice.

Appellant states in his appeal:

I have in my possession copies of rental checks, which were stamped and returned by the Bureau of Land Management, dated May 25, 1979. This shows to have been received prior to the rental due date of June 1, 1979.

As I can find no cause for the case files to have been closed, as payment of rentals have been timely paid, I hereby request that the case file be re-opened and the lease in full force and effect.

The lease form used shows that subsequent to competitive bidding, geothermal resource leases U-38459 and U-39753 issued effective June 1, 1978, for 1,156.20 acres and 494.18 acres, respectively, to W. H. Hunt. The leases were issued for a primary term of 10 years. The annual rental rate as stated in section 3(a) of the leases was \$2 per acre or fraction thereof. This amounted to \$2,314 for U-38459 and \$990 for U-39753.

[1] As appellant has indicated, he did send in checks for \$1,157 and \$495 by May 25, 1979, well before the first anniversary date of the lease, June 1, 1979. This was half of the amount due. He neglected to submit any further rental payment. When he did not tender the remainder of the rental due before the June 1, 1979, deadline, the lease expired by operation of law pursuant to 43 CFR 3244.2-1 which provides:

§ 3244.2-1 General.

Except as provided in § 3244.2-2 any lease will automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the proper BLM office. Upon such notation the lands included in such lease will become subject to leasing as provided for in Subpart 3211 of this chapter.

Appellant does not deny that he did not send the full rental amount timely. He apparently is under the mistaken impression that the annual rental was only \$1 per acre instead of the \$2 written in the leases. Since his half payment left more than a nominal deficiency in the rental amount, he did not qualify for a notice of deficiency from the authorized officer as per the requirement of 43 CFR 3244.2. This regulation provides for notice of deficiency where the rental is deficient by not more than \$10 on one percentum (1%) of the total payment whichever is more.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

